

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH RAYMOND	:	
McKETRICK,	:	
	:	Civil Action No. 4: 06-CV-329
Petitioner,	:	
	:	(Judge McClure)
v.	:	
	:	(Magistrate Judge Blewitt)
LT. McCONNELL,	:	
	:	
Respondent.	:	

**ORDER**

January 8, 2007

**BACKGROUND:**

Plaintiff, an inmate at the United States Penitentiary, Lewisburg, Pennsylvania, filed this civil rights action, pursuant to 28 U.S.C. § 1331 on February 14, 2006. Plaintiff is proceeding *pro se*.

The case was initially referred to United States Magistrate Judge Thomas M. Blewitt. On December 15, 2006 Magistrate Judge Blewitt issued his report and recommendation in which he reported that the matter is currently proceeding on an Amended Complaint (rec. doc. no. 14), which is the subject of a motion to dismiss and/or for summary judgment filed by the sole remaining defendant, Lt. McConnell, on November 22, 2006 (rec. doc. no. 16). Defendant's motion is not yet ripe for disposition.

However, on December 11, 2006, plaintiff filed with the court a one-page document entitled “Dismiss Motion” (rec. doc. no. 33), wherein he states, “. . . I dismiss my lawsuit against Lt. McConnell . . .”

The magistrate judge noted that under Rule 41(a)(2) of the Federal Rules of Civil Procedure, “an action shall not be dismissed at the Plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.”

Based on the foregoing, the magistrate judge recommended that the plaintiff’s filing of December 11, 2006 (rec. doc. no. 33) be construed as a Notice of Dismissal under Rule 41(a)(2) of the Federal Rules of Civil Procedure and that this case be dismissed without prejudice.

No objections have been filed to the report and recommendation of the magistrate judge.

The court agrees with the report and recommendation of the magistrate judge and will adopt it in full for the reasons therein set forth.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. The Report and Recommendation of United States Magistrate Judge Thomas M. Blewitt is approved and adopted in full for the reasons

therein set forth.

2. Plaintiff's filing of December 11, 2006 (rec. doc. no. 33) is construed as a Notice of Dismissal under Rule 41(a)(2) of the Federal Rules of Civil Procedure.
3. The case is dismissed, without prejudice.
4. The clerk is directed to close the case file.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge